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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Mr. Alan Hasselwander
Chairman
North American Numbering Council
4140 Clover Street
Honeoye Falls, NY 14472

Dear Mr. Hasselwander:

Mitretek offers for the NANC's consideration the enclosed comments on the definition of neutrality for the NANP Administrator. We hope that these comments are useful to the NANC and its associated working groups. Given the complexity and sensitivity of the neutrality issue, we believe that written, publicly available comments are most appropriate.

If you have any questions, please do not hesitate to contact me.

*Innovative Technology
in the Public Interest*

Sincerely,



H. Gilbert Miller

HGM/dm

cc: Recd Hundt, Federal Communications Commission Chairman
Commissioner James Quello
Commissioner Susan Ness
Commissioner Rachelle Chong
Regina Keeney, FCC Common Carrier Bureau Chief
Marian Gordon, FCC Common Carrier Bureau
Scott Shefferman, FCC Common Carrier Bureau
NANC Working Group Chairpersons

Enclosure

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Comments on the Definition of Neutrality for the North American Numbering Plan Administrator

Summary

1. In the North American Numbering Plan (NANP) Administration Report and Order (R&O), the Commission clearly stated its reasons for changing the current model for NANP administration and the importance for neutrality and impartiality in the NANP Administrator:
 - “[C]hanges in the structure of the telecommunications market make it appropriate to shift administrative responsibilities for all domestic numbering matters to a neutral entity.”
 - “Eliminating the potential for discriminatory treatment that exists under the current system is a major purpose behind the decision to adopt the new model for administering numbering resources.”
2. Given the required change in the model for NANP administration, the Commission stated the following:
 - “[T]he new NANP Administrator should be a single, non-government entity that is not closely identified with any particular industry segment.”
 - “We believe that it would be very difficult, if not impossible for a NANP Administrator closely associated with a particular segment of the telecommunications industry to be impartial. Even if a NANP Administrator aligned with a particular segment was impartial, there would still likely be the perception and accusations that it was not.”
 - “The NANP Administrator must be fair and impartial.”
3. If the North American Numbering Council (NANC) elects to postpone further specification of neutrality, post-selection conflict mitigation will pose difficult decisions for the NANC and the Commission, and possibly result in:
 - Number allocation delays
 - Perceived discrimination in number allocation

- Additional NANP administration workload for the NANC, and possibly the Commission, if the new NANP Administrator must be recused on any matter
 - Reselection of the new NANP Administrator
4. Therefore, we suggest that the NANC, as part of its Requirements Statement, and the Commission, as part of its rules under which the new NANP Administrator will operate, adopt a specific definition of conflict of interest and a set of neutrality rules. These rules would serve to protect the credibility and integrity of the Commission, NANC, and NANP Administrator, and ensure the public trust and confidence in the allocation of the limited number resource. The suggested rules address the nature of external NANP Administrator business and financial relationships, as well as the required disclosure of relevant business affairs and information by the corporate entity serving as the NANP Administrator, its subcontractors, and its personnel.

Discussion

This discussion offers a foundation for defining neutrality and conflict of interest and rules suggested for the selection and operation of the NANP Administrator. This discussion reviews in detail requirements found throughout the NANP Administration R&O,¹ and conflict of interest approaches from other technology-related sectors. The reason for this detailed review is to ensure a foundation upon which to base the suggested neutrality and conflict of interest definition and rules.²

Commission Statement of Neutrality Requirements for the NANP Administrator

In the NANP Administration R&O, the Commission clearly stated its reasons for changing the current model for NANP administration and the importance for neutrality and impartiality in the NANP Administrator:

- “These numbers are a public resource, and are not the property of the carriers.”³
- “[C]hanges in the structure of the telecommunications market make it appropriate to shift administrative responsibilities for all domestic numbering matters to a neutral entity. Increasingly, companies needing numbering resources, such as PCS

¹ *Administration of the North American Numbering Plan*, Report and Order, FCC Docket No. 92-237, July 13, 1995 (hereafter R&O).

² Observations, comments, and conclusion drawn in the discussion that follows were prepared for the ‘ministerial’ or ‘resource allocation’ functions and role of the NANP Administrator. The neutrality and conflict of interest definitions and rules are appropriate because a limited number resource is being allocated to competing entities.

³ Id. at paragraph 4.

providers, are competitors for market share of the carriers that directly and indirectly controlled distribution of numbering resources.”⁴

- “Parties contend that access to number resources is critical and that increased telecommunications competition demands changes to the current structure that is dominated by the LECs.”⁵
- “Changes in the telecommunications industry lead us to reexamine existing numbering resource administration.”⁶
- “Eliminating the potential for discriminatory treatment that exists under the current system is a major purpose behind the decision to adopt the new model for administering numbering resources.”⁷

Given the required change in the model for NANP administration, the Commission, throughout the R&O, stated the following:

- “[T]he new NANP Administrator should be a single, non-government entity that is not closely identified with any particular industry segment.”⁸
- “We believe that it would be very difficult, if not impossible for a NANP Administrator closely associated with a particular segment of the telecommunications industry to be impartial. Even if a NANP Administrator aligned with a particular segment was impartial, there would still likely be the perception and accusations that it was not.”⁹
- “Administration of the plan must seek to facilitate entry into the communications marketplace by making numbering resources available on an efficient, timely basis to communications services providers.”¹⁰
- “Administration of the NANP should not unduly favor or disadvantage any particular industry segment or group of consumers.”¹¹

⁴ Id. at paragraph 14.

⁵ Id. at paragraph 17.

⁶ Id. at paragraph 1.

⁷ Id. at paragraph 114.

⁸ Id. at paragraph 5.

⁹ Id. at paragraph 57.

¹⁰ Id. at paragraph 15.

¹¹ Id. at paragraph 15.

- "Administration of the NANP should not unduly favor one technology over another. The NANP should be largely technology neutral."¹²
- "The NANP Administrator must be fair and impartial."¹³

In the same way that the Congress left to the Commission the further definition of impartiality, the Commission left to the NANC further specification of neutrality in its selection and implementation of the NANP Administrator. The NANC may choose to use only the specification in the R&O, or may choose to adopt a set of more specific and clarifying neutrality rules. As it begins its selection process and sets rules for later operational use, the NANC is uniquely positioned to address the neutrality issues. If the NANC elects to postpone further specification of neutrality, post-selection conflict mitigation will pose difficult decisions for the NANC and the Commission, and possibly result in:

- Number allocation delays
- Perceived discrimination in number allocation
- Additional NANP administration workload for the NANC, and possibly the Commission, if the new NANP Administrator must be recused on any matter
- Reselection of the new NANP Administrator

Therefore, we suggest that the NANC, as part of its Requirements Statement adopt a specific definition of conflict of interest and neutrality rules under which the new NANP Administrator is selected and later operates.

Examples from Other Technology and Scientific Areas

Similar definitions and rules exists in other sectors requiring neutrality, impartiality, and conflict of interest. We now review other such definitions and rules. The Massachusetts Institute of Technology (MIT) Ethics Center, examining issues of ethics for engineers, provides a broad definition of conflict of interest as

A person has a conflict of interest when the person in a position of trust which requires her to exercise judgment on behalf of others (people, institutions, etc.) and also has interest or obligations of the sort that might interfere with the exercise of her judgment, and which the person is morally required to either avoid or openly acknowledge.¹⁴

¹² Id. at paragraph 15.

¹³ Id. at paragraph 57.

¹⁴ At <http://www.mit.edu:8001/activities/ethics/gloss/conflict.html>.

Considerations of conflict of interest over the past decade by the scientific and research communities¹⁵ led to the adoption by the National Science Foundation (NSF)¹⁶ and National Institutes of Health (NIH)¹⁷ of an almost identical set of requirements for defining and disclosing actual and potential conflicts of interest. These requirements, which were included in federal regulations¹⁸ following scientific community review and comment through an issued notice of proposed rulemaking, must be followed for all applicable research receiving federal funding.

The NSF/NIH derived federal regulations have been included in the conflict of interest policies of nearly every university in the United States.¹⁹ In adopting the federal regulations, Texas A&M²⁰ first notes that

[The] purpose [of this conflict of interest policy] is to protect the credibility and integrity of [the organization], so that public trust and confidence in [its fundamental] activities are maintained.

Again from Texas A&M, a 'Trust Test' is defined:

Would relevant others (employer, clients, professional colleagues, to the general public) trust my judgment if they knew I was in this situation?

Then, based solely on the federal regulations, Texas A&M specifically defines conflict of interest as:

A potential conflict of interest occurs when an individual's private interests compete with his/her professional obligations to the System to a degree that an independent observer might reasonably question whether the individual's professional actions or decisions are determined by considerations of personal gain, financial or otherwise. This regulation is to address such conflicts when a significant financial interest reasonably appears to affect or bias the design, conduct or reporting of research or educational activities funded or proposed for funding to sponsoring agencies.

¹⁵ Of major concern by these communities was the potential for conflict of interest in drug, medical, and gene engineering research with billion dollar impacts.

¹⁶ National Science Foundation, *Issuance of Notice: Investigator Financial Disclosure Policy*, 30 June 1994.

¹⁷ Public Health Service and the Office of the Secretary, Health and Human Services. "Objectivity in Research," *NIH Guide*, Volume 24, Number 25, 14 July 1995.

¹⁸ 42 CFR Part 50.

¹⁹ See, for example, Yale University at <http://www.med.yale.edu/sciaffr/grants/conflict.html>, Brown University at http://www.brown.edu/Administration/Research_Administration/ora-handbook/secvipol/conflict.html, Texas A&M University at <http://sago.tamu.edu/policy/15-01-03.htm>, Eastern Michigan University at http://www-ord.acad.emich.edu/develop/policy/conflict_of_interest.html, and University of Connecticut at <http://cortex.uhc.edu/~orsp/policies/cojoint.html>.

²⁰ At <http://sago.tamu.edu/policy/15-01-03.htm>.

Significant Financial Interest means anything of monetary value, including but not limited to, salary or other payments for services (e.g., consulting fees or honoraria from profit-making enterprises); equity interests (e.g., stocks, stock options or other ownership interests); and intellectual property rights (e.g., patents, copyrights and royalties from such rights).

Yale University²¹ recognizes the equal importance of the appearance of (or perceived) conflict of interest.

There are certain cases in which the appearance of conflict of interest is present even when no conflict actually exists. Such apparent conflicts can do almost as much damage as actual ones, undermining the credibility of research and scholarship or of University financial decisions and calling into question the integrity of an individual or the University or both. For this reason, it is important for a individual, in evaluating a potential conflict of interest, to consider how it might be perceived by others... These apparent conflicts of interest must also be avoided, and the same rigorous evaluation must be applied to situations in which there is potential for such misunderstanding as is applied to situations in which there is the potential for actual conflict.

The Association of American Universities²² (AAU) defines a structure and process for conflict of interest policies. The AAU explicitly applies the conflict of interest policies and structure to both the organization and the personnel in that organization. Central to the AAU structure, as well as to the federal regulations, is the disclosure of all related financial, and, hence, business relationship, information. Disclosure is required initially, periodically, and at the time a potential conflict of interest is discovered. The disclosure is to include all relevant information so that an independent party can determine if a conflict of interest exists.

Suggested Neutrality and Conflict of Interest Language

We suggest that the NANC, as part of its Requirements Statement, and the Commission, as part of its rules under which the new NANP Administrator will operate, adopt the following definition of conflict of interest and set of neutrality rules. These rules would apply to the selection of the new NANP Administrator and its later operation. We believe that organizations that cannot meet these rules should not be eligible to become the new NANP Administrator.

²¹ At <http://www.med.yale.edu/scia/ffr/grants/conflict.html>.

²² At <http://www.tulane.edu/~aau/Frwk.COI.html>.

1. **Purpose.** The purpose of this neutrality and conflict of interest policy is to protect the credibility and integrity of the Commission, NANC, and NANP Administrator, so that public trust and confidence are maintained.
2. **Conflict of Interest Definition.** A potential conflict of interest occurs when the interests of the corporate entity serving as the NANP Administrator, or the interests of any personnel supporting NANP Administration functions, compete with the obligations to the NANC to a degree that an independent observer might reasonably question whether the NANP Administrator's actions or decisions are determined by considerations of organizational or personal gain, financial or otherwise. This definition is to address such conflicts when a significant financial interest reasonably appears to affect or bias the administration of NANP activities.

Significant financial interest means anything of monetary value, including but not limited to, revenues from non-NANP related activities or other payments for services (e.g., revenues from contracts with carriers); equity interests (e.g., stocks, stock options or other ownership interests); and intellectual property rights (e.g., patents, copyrights and royalties from such rights).

The appearance of or a perceived conflict of interest is to be equally avoided and addressed as with any real or actual conflict of interest.

3. **Specific Neutrality and Conflict of Interest Rules.**
 - A. The corporate entity serving as the NANP Administrator will have no direct or indirect significant financial interests with any telecommunications carrier. Specifically:
 - The corporate entity serving as the NANP Administrator may not enter into contracts with the carriers, from which the NANP Administrator will receive revenue or other financial interest or any other consideration for products or services performed.
 - The corporate entity serving as the NANP Administrator may not hold any equity share or equity option in any carrier corporation. Similarly, no carrier will hold any equity share or equity option in the entity serving as the NANP Administrator.
 - B. The corporate entity serving as the NANP Administrator will fully disclose to the NANC and the Commission, its affairs, including all financial information and any other corporate information required to assess the potential NANP Administrator's neutrality and conflict of interest position. Disclosure will

occur when responses to the Requirements Document initially are submitted, annually, and at any time after selection as requested by the NANC or the Commission.

- C. The corporate entity serving as the NANP Administrator will not engage in any business activity which could make the new NANP Administrator appear unsuitable for having access to sensitive data required to fulfill the NANP administration and CO code administration functions. Examples of such sensitive data include, but are not limited, to:

- Carrier business or strategic plans.
- Carrier applications for numbering resources, and any supporting or relevant documentation.
- Carrier-proprietary methodologies, business practices, or data.

Examples of such business activities which the corporate entity serving as the NANP Administrator will not engage in include, but are not limited, to:

- Competing with any carriers.
- Partnering or otherwise collaborating with any organization, where the purpose of the partnership or collaboration is to compete with any carrier.

- D. Compliance of these rules is required when responses to the Requirements Document are submitted.
- E. All of the above rules apply equally to all parent entities of the NANP Administrator, all subcontractor entities working to perform NANP functions, and all personnel in the NANP Administrator organization and its subcontractors.